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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/658,784 | 09/11/2000 | Ivo Raaijmakers | ASMEX.236A | 4439 |
| 20995 | 7590 | 09/02/2004 | EXAMINER | |
| KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614 | | | ZERVIGON, RUDY | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1763 | |

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/658,784

Filing Date: September 11, 2000

Appellant(s): RAAIJMAKERS ET AL.

Rabiner N. Narula
For Appellant

EXAMINER'S ANSWER

MAILED
SEP 02 2004
GROUP 1700

This is in response to the appeal brief filed June 17, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on November 13, 2003 has been entered.

The amendment after final rejection filed on June 17, 2004 has not been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The Examiner agrees with Applicant's grouping of claims.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

| | | |
|-------------|------------------------|---------|
| 6,234,107 | Tanaka, Keiichi et al. | 5-2001 |
| 6,280,134 | Nering, Eric A. | 8-2001 |
| JP06-275703 | Kondo | 9-1994 |
| 5,223,001 | Saeki, Hiroaki | 6-1993 |
| 5,071,460 | Fujiura, Kazuo et al. | 12-1991 |

(10) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claims 61, 67, 103, and 110 are rejected under 35 U.S.C. 102(e) as being anticipated by Tanaka (USPat. 6,234,107). This rejection is set forth in a prior Office Action, mailed on August 13, 2003.

Claims 107-109 and 113-116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka (USPat. 6,234,107) in view of Nering, Eric A. (USPat. 6,280,134). This rejection is set forth in a prior Office Action, mailed on August 13, 2003.

Claims 104, 105, 111, and 112 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al (USPat. 6,234,107) in view of Kondo et al (JP06-275703). This rejection is set forth in a prior Office Action, mailed on August 13, 2003.

Claim 106 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al (USPat. 6,234,107) in view of Saeki (USPat. 5,223,001) and Fujiura et al (USPat. 5,071,460) . This rejection is set forth in a prior Office Action, mailed on August 13, 2003.

(11) Response to Argument

Applicant states:

“

The first port, in turn, communicates between the load lock and the substrate handling chamber,
which in turn communicates with at least one process chamber.

“

In response, the Examiner cites that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. (See MPEP § 2145, § 2111 - § 2116.01; In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571-72, 7 USPQ2d 1057, 1064-1065 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); Ex parte McCullough, 7 USPQ2d 1889, 1891 (Bd. Pat. App. & Inter. 1987).

Further, Applicant's position is confusing. Does Applicant cite that Applicant's first port communicate between the load lock chamber, the substrate handling chamber, and the at least one process chamber? Or does Applicant cite that Applicant's first port communicate between the load lock chamber and the substrate handling chamber, and that the substrate handling chamber communicates with at least one process chamber?

Regardless, nowhere in the body of any claim requirements does Applicant require that the first port “communicates” as discussed in either of the above interpretations:

Appealed Claim 61:

“

a substrate handling chamber selectively communicating with the load lock chamber through the first port; and at least one process chamber selectively communicating with the substrate handling chamber, wherein the first port is located in the upper portion.

“

Appealed Claim 67:

“

a substrate handling chamber selectively communicating with the load lock chamber through the first port; and at least one process chamber selectively communicating with the substrate handling chamber, wherein said first port opens into said upper portion and said second port opens into said lower portion.

“

It is noted that Tanaka et al (USPat. 6,234,107) teaches at least one process chamber (1-3, Figure 1; column 3, lines 20-38) selectively communicating with the substrate handling chamber (16, Figure 1,6). That chambers 1-3 and 16 in Figure 1 “communicate selectively” is demonstrated by the plural processing paths through plural ports (14, 15, 10, 11, 5-7; Figure 1).

The context of the claims are given the broadest possible interpretation:

Communicating:

4. *intransitive verb* have common access: to be connected or provide access to each other¹

¹ http://encarta.msn.com/dictionary_/communicating.html

Applicant states:

"

In contrast, the recited arrangement of Claims 61 and 67 is capable of loading the wafer at a lower level, raising the wafer into the upper portion and thereby sealing the wafer in a smaller, more controllable environment before transferring the wafer into the processing environment from the upper portion. This sequence is not possible with the structure taught by Tanaka. Moreover, neither Tanaka nor any other reference of record teaches or suggests modifying the structure of Tanaka to meet the limitations of independent Claims 61 and 67.

"

In response, it is well established that apparatus claims must be structurally distinguished from the prior art (In re Danley, 120 USPQ 528, 531 (CCPA 1959). "Apparatus claims cover what a device is, not what a device does ."(emphasis in original) Hewlett - Packard Co . v. Bausch & Lomb Inc ., 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), MPEP – 2114). Further, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

The Examiner asserts, contrary to Applicant's position, that Tanaka et al (USPat. 6,234,107) is capable of performing Applicant's intended use amounting to, as Applicant suggests as a "sequence". Per Tanaka's plural processing paths through plural ports (14, 15, 10, 11, 5-7;

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Figure 1) it is acceptable to consider Tanaka's processing as bi-directional due to the lack of *exterior* ports (26, 27; Figure 1) other than those interfacing cassette chambers 20, 21; Figure 1. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Rudy Zervigon
Examiner
Art Unit 1763


9/1/04

Rudy Zervigon
September 1, 2004

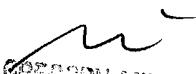
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